

Drug Case Voided, Wiretap Use Cited

By Robert Kraftowitz
Washington Post Staff Writer

OAKLAND, Md., July 16—A Garrett County Circuit Court judge declared today that the state's law permitting court-authorized wiretapping by police was unconstitutional and dismissed drug charges against 11 defendants, most of whom are from the Washington area.

Acting in the cases of Joseph W. Lee, 23, son of Maryland Lt. Gov. Blair Lee III, and ten others, Judge Stuart F. Hamill ruled that all prosecution evidence gained by use of wiretaps was inadmissible.

He found that the Maryland wiretap law lacks certain safeguards against invasion of privacy made mandatory by a U.S. Supreme Court ruling in 1967.

Judge Hamill, who had been told by the prosecution earlier that its entire case rested on such evidence, then dismissed all the indictments. His action allows the state to take the case to the Maryland Court of Appeals, which would rule on whether the wiretap law should be stricken from the books.

If the Appellate Court upholds the law, the prosecution could seek new indictments.

If it upholds Judge Hamill's ruling, it is unlikely that Montgomery County officials would be able to obtain enough valid evidence to seek re-indictment of the 11 defendants, according to Jeffrey R. Werner, assistant state's attorney for Montgomery County.

Most of the defendants were arrested last Nov. 9 after Montgomery County police raided the younger Lee's residence, a refurbished barn behind the lieutenant governor's house at 400 Warrenton Dr., Silver Spring.

Police said they found 21 pounds of marijuana, two pounds of hashish and a "quantity of other controlled substances" — nonaddictive drugs whose commercial sale and use is prohibited under a statute less harsh than the narcotics laws.

See WIRETAP, B3, Col. 1

Lee Drug Case Charges Dismissed, Police Wiretap Use Ruled Illegal

WIRETAP, From B1

The wiretaps used in the case were installed in the home of defendants Nicholas C. Wilson, 25, and Mary S. Wilson, 23, of 20 Shaw Ave., Silver Spring, according to Werner.

Lee and two other defendants were indicted on charges of possession of marijuana with the intent to distribute, a felony. They were also charged with 17 other misdemeanor violations of Maryland's drug law.

The other eight defendants were charged with conspiracy to violate the controlled dangerous substance act a misdemeanor.

24 Wiretap Ruling

Today's ruling was the second in which a Maryland Circuit Court has found the state's wiretap law to be inconsistent with the U.S. Constitution. But the other ruling, by Montgomery County Circuit Court Judge Plummer M. Shearin in 1967, was never appealed, and the law remained in effect because rulings by trial judges, unlike those of appellate courts, are not binding on other judges.

This time, however, Werner promised to file an appeal.

Like Judge Shearin, Judge Hamill found that the Maryland statute lacked the safeguards made mandatory by the Supreme Court's 1967 decision.

The 1967 decision struck down a New York wiretap law, which defense attorneys in the current case argued was similar to the Maryland statute.

"Like the New York State statute, the Maryland statute is a broad, sweeping provision without precise and discriminate requirements, thereby permitting indiscriminate use," James J. Cromwell, an attorney for Lee, contended in a brief filed with the Court.

Judge Hamill did not elaborate today on which aspects of the state law were invalid, saying only, "the Supreme Court has struck down a similar statute in New York."

The judge stressed his belief that the law enforcement officers connected with the case did not themselves exceed constitutional boundaries

in their handling of the wiretap.

"Unfortunately, it is my opinion that the wiretapping was authorized under an unconstitutional law," he said.

Among the safeguards defense attorneys said the law lacks are:

A requirement that police, when seeking court authorization for wiretapping, state in writing the particular conversation they expect to record through the eavesdropping.

A requirement that the wiretap be removed immediately after police intercept the conversation they wish to record. "The Supreme Court found that (without this requirement), the officer can continue recording with the hope of producing further evidence, this transforming his activity into an unacceptable fishing expedition," defense attorney Cromwell argued.

A requirement that police demonstrate "probable cause" that a crime is being committed and indicate the nature of the crime. The Maryland statute requires police to show only that "there are reasonable grounds to believe a crime has been committed or is about to be committed."

Judge Hamill said that the ultimate solution would be for the State Court of Appeals to strike down the Maryland statute, prodding the General Assembly into writing a new wiretap law that is in line with the established guidelines.

Proceedings Moved

The court proceedings were transferred from Montgomery to Garrett County, the westernmost jurisdiction in Maryland, after a Montgomery Circuit judge ruled that excessive pretrial publicity in Washington area news media had prejudiced the defendants' right to a fair trial.

Defense lawyers also argued in hearings last March that every Montgomery Circuit judge was personally acquainted with the Lee family.

Joseph Lee was arrested five days after his father, a Democrat, was elected. His grandfather, E. Brooke Lee, is a former county Democratic chairman who was long prominent in state Democratic politics.

An aunt, Elizabeth Scull, is a member of the Montgomery County Council.

In addition to Joseph Lee, Eugene R. Rosenthal, 27, and Gayle L. Moore, 24, both of 9505 Evergreen St., Silver Spring, were charged with possession of marijuana with intent to distribute.

Charged with conspiracy to violate the controlled dangerous substance act were the Wilsons and Kent T. Martin, 18, of 10 Warrenton Dr., Silver Spring; Leland M. Talbert, 26, of Annapolis; Bruce A. Hermann, 25, of 5401 Westbard Ave., Bethesda; Thomas B. Hoskins, 29, of 6507 Flanders Ave., Chillum; Michael Tepping, 27, of 401 Apple Grove Rd., Silver Spring, and Robert E. Woodford of 3419 Pendleton Dr., Wheaton.